and restoration, it was quite proper for the learned trial judge to award interest on it in the way he did. He had noted that the appellant 'did not question the arithmetical calculations relating to the three heads of damages'.

A court in Singapore has power to order interest at such rate as it thinks fit for the period up to the date of judgment on the damages that it awards: Civil Law Act (Cap 43, 1988 Ed), s 9. In the present case, a 17% rate of interest was used by the respondent in making up its claim. The record does not show that any serious challenge was made by the appellant to this rate in the court below, and the rate was applied by the learned trial judge. Before this court, appellant's counsel has referred to the long-standing practice of the Commercial Court in London to award a rate of interest which reflects the current commercial value of money. The court has been taken by him through the progressive developments in London of applying an interest rate of 1% over the current banking norm, whether it was over the bank rate (*FMC Meat* v *Fairfield Cold Store*[1]); or over the minimum lending rate (*Miliangos* v *George Frank (Textiles)*[2]); or over base rate (*Polish Steam Ship Co* v *Atlantic Maritime Co; 'The Garden City'*[3] at p 67). The respondent's counsel has submitted that the proper course for a court to follow would be to apply the rate at which the actual plaintiff in a case, provided he did not have any special or peculiar attribute, could borrow in the market (see *Tate & Lyle Food and Distribution* v *Greater London Council*[4]); and in the present case, she has submitted that in fact Mr Pandya gave evidence that at the material time 17% interest was the rate the UK banks were charging on pound sterling loans. Mr Pandya was not asked to prove this nor was he cross-examined on it. While strong economic conditions in Singapore over the years, including a low rate of inflation, have enabled interest rates to be maintained at a consistently low level, we are of the view that the interest rate in the present case has to be arrived at with reference not to Singapore rates but to the rate at which the respondent could reasonably have borrowed in pound sterling at the material time. In our view, therefore, the 17% interest rate should not be disturbed.

In response to the form in which the claim was filed, the damages awarded to the respondent in the court below were expressed in Singapore currency, after converting them at the exchange rate prevailing at a certain date. As in the UK (see *Miliangos* v *George Frank (Textiles)*[2]), a Singapore court in an appropriate case may make its award of damages in a foreign currency. In the present case, the loss to the respondent was incurred in the UK and in our view, it would be more appropriate in all the circumstances for the award of damages to be expressed in pound sterling without any conversion into its Singapore dollar equivalent. This would also avoid the additional problem in a case which has unfortunately taken so many years to reach this point, of having possibly to consider the implications of the great variations in rates of exchange in the intervening period. The order in the court below dated 1 November 1988 will be varied accordingly.

Appeal dismissed.

Solicitors: *Allen & Gledhill; Joseph Hoo Morris & Kumar.*

Reported by *Zarinah Marican*

How Poh Sun v Public Prosecutor

COURT OF CRIMINAL APPEAL (SINGAPORE) — CRIMINAL APPEAL NO 11 OF 1990
YONG PUNG HOW CJ, LAI KEW CHAI AND RAJENDRAN JJ
30 JULY 1991

Evidence — Agent provocateur — Defence not recognized in Singapore — Court has no discretion to refuse to admit relevant admissible evidence on ground that it was obtained by improper or unfair means

The appellant was convicted on a charge of unauthorized trafficking in of not less than 33.71g of diamorphine and sentenced to death. The prosecution's evidence, which was largely unchallenged, was that narcotics officers were told by one Goh Yong Siong, whom they had arrested the day before the appellant's arrest, that his boss was the appellant. Goh then arranged for the appellant to bring the drugs to the Ang Mo Kio Industrial Park 1 canteen where Goh would meet the appellant. The appellant was arrested by narcotics officers when he arrived at the canteen. On appeal, the appellant's counsel relied indirectly on a submission of 'agent provocateur', that the role played by Goh as an agent provocateur should be relevant in convicting and sentencing the appellant.

Held, dismissing the appeal:
The observations of the Law Lords in *R* v *Sang*[1] that the defences of agent provocateur and entrapment do not exist in English law would also reflect the position in Singapore. It is not the province of the court to consider whether the CNB should have proceeded about its work in one way or the other. The court can only be concerned with the evidence before it. On the evidence before it in the present case, a conviction on any other charge would not have been appropriate.

Case referred to
1 *R* v *Sang* [1980] AC 402; [1979] 2 All ER 1222 (folld)

Appeal from: Criminal Case No 39 of 1988 (High Court, Singapore)

Edward D'Souza for the appellant.
Ismail Hamid (Senior State Counsel) for the respondent.

Cur Adv Vult

Yong Pung How CJ (delivering the judgment of the court): The appellant, How Poh Sun, was charged for an offence of unauthorized trafficking in of not less than 33.71g of diamorphine. The charge read:

You, How Poh Sun, are charged that on or about 7 November 1977 between 8.20pm and 9.05pm in Singapore did traffic in a controlled drug specified in Class 'A' of the First Schedule to the Misuse of Drugs Act (Cap 185, 1985 Ed) to wit by transporting ten plastic packets of drug containing a total of not less than 33.71g of diamorphine in a motor pick-up registration No GG 9516A from the car park of Block 56, Lengkok Bahru to Block 4013, Ang Mo Kio Industrial Park 1 without any authorization under the said Act or the regulations made thereunder and you have thereby committed an offence under s 5(a) of the Misuse of Drugs Act and punishable under s 33 of the said Act.

The following facts were not disputed either in the court below or before us. On the morning of 6 November 1987, two persons were arrested by officers from the Central Narcotics Bureau ('CNB') on suspicion for offences under the Misuse of Drugs Act (Cap 185, 1985 Ed) ('the Act'). One of the two was Goh Yong Siong ('Goh'). He was brought back to the CNB office. He told chief narcotics officer, Wong Kwan Chun ('CNO Wong') that his boss was a person known by the nickname of 'Har Tow'. In court, he identified the appellant as 'Har Tow'. He also offered to call up 'Har Tow' by telephone. CNO Wong allowed Goh to do so in his presence. Narcotics officer Ho Thiam Huat ('NO Ho') was also present at the time. Goh then proceeded to dial telephone number 473-5752. A male voice answered the call made by Goh.

CNO Wong gave evidence in court that he and NO Ho listened in to the telephone conversation by attaching an amplifier to the phone. Goh and the male voice conversed in Cantonese. The content of this particular telephone conversation by itself was of no significance except that it proved the fact that Goh had succeeded in making the contact. The telephone number 473-5752 was traced by the CNB officers to a telephone in a HDB flat at Block 56, Lengkok Bahru, #10-447 which was later ascertained to be the appellant's residence.

On 7 November 1987, NO Ho went to the CNB office in the afternoon. He brought Goh from the lock-up to his office at about 5pm. Assistant narcotics officer Seah Shyr Dong ('ANO Seah') was with him. Goh said he wanted to call his boss again. NO Ho again attached an amplifier to the phone and listened in to this conversation. Goh told the male voice on the other end that he had a buyer who wanted a large quantity of 'goods' from him. He said that this new buyer was known as 'Sakai' and he was from Sembawang. Goh told the male voice on the other end to wait for his further phone call.

Immediately after this phone call was made, NO Ho contacted his superior CNO Wong at the latter's home. CNO Wong, on receiving the call, went to the CNB office to mount an operation. He instructed SNO Yeo Kiah Hee ('SNO Yeo') and NO Lee Kiong Lock ('NO Lee') to proceed to Block 56, Lengkok Bahru to keep watch. NO Ho also left with ANO Jeffrey Cheng Siew Khow for Lengkok Bahru a little later at around 6.40pm.

Meanwhile ANO Seah remained in the office with Goh. According to his evidence, Goh kept pestering him as to the quantity of drugs he should ask 'Har Tow' to supply. He finally gave in to Goh and suggested 20 to 22 packets. Goh in his evidence confirmed that the suggestion of 22 packets came from a CNB officer. CNO Wong, in his evidence however, denied that he had ever given any instruction to Goh as to the quantity Goh should ask 'Har Tow' to supply.

At about 6.50pm, CNO Wong and ANO Seah allowed Goh to call the same telephone number again. The call was again monitored by CNO Wong and ANO Seah. Again, the same male voice answered. Goh told him that a person called 'Sakai' from Sembawang wanted a large quantity of 'goods' of about 25 packets. Goh said in his evidence that he asked for 25 packets on his own volition, although an amount of 22 packets had been suggested to him earlier. The male voice said that, as Goh himself still had some supply left, he would let Goh have only 10 packets. Goh said that he would negotiate further with the buyer 'Sakai' and that he would call again later to confirm the deal.

At 7.05pm, Goh called the same number again and the same male voice confirmed the deal with Goh. This call too was monitored by the two officers. Goh then made arrangements to meet, and the male voice said he would meet Goh at the canteen of Ang Mo Kio Industrial Park 1 at about 9pm to deliver the 'goods'. The price of the 'goods' was agreed at $240 per packet.

After Goh was brought back to the lock-up, CNO Wong led a party consisting of ANO Seah and three other ANOs in a motor car. They arrived at the car-park of Block 56 Lengkok Bahru at about 8pm. ANO Seah had obtained a physical description of 'Har Tow' from Goh during the period between the telephone calls.

At about 8.35pm, ANO Seah spotted a person who fitted the physical description of 'Har Tow' given to him by Goh. That person was the appellant. As ANO Seah proceeded to walk up the first flight of the staircase of Block 56 from the ground floor, the appellant came down and they passed each other. ANO Seah followed the appellant on foot and noticed that the appellant was carrying a package wrapped in newspaper. He observed the appellant and saw him walking towards the main road, stopping on his way to buy a newspaper from a roadside vendor. At this juncture, ANO Seah informed ANO Tan Yian Chye ('ANO Tan') to keep an eye on the appellant while he proceeded to inform the rest of the officers.

ANO Tan also testified in court. He said that after the accused was identified to him by ANO Seah, he

followed the accused for a short distance, but returned to get his motor cycle in order to continue to trail the accused. But when he rode his motor cycle out of the car-park, he lost sight of the accused. He then returned to Block 57, Lengkok Bahru, to inform SNO Yeo that he had lost the accused. Other officers were similarly informed of this loss of surveillance. SNO Yeo, NO Lee and ANO Tan remained behind in the vicinity of Block 57 of Lengkok Bahru while the rest of the CNB officers led by CNO Wong left for Ang Mo Kio Industrial Park 1.

This party of officers arrived at the canteen of Ang Mo Kio Industrial Park 1 at 8.50pm. ANO Seah positioned himself in front of the canteen while the rest of the officers, together with CNO Wong, positioned themselves at the bus stop along Ang Mo Kio Avenue 10, about 50m away from the canteen.

At about 9pm, ANO Seah spotted a motor pick-up coming from the direction of Ang Mo Kio Avenue 10. It turned into the side road next to the canteen. The vehicle was parked a short distance from the main road. This time ANO Seah spotted the appellant alighting from the passenger side of the vehicle with a folded newspaper in his hand. He immediately alerted the officers at the bus stop. The raiding party then closed in and arrested the appellant inside the canteen. They found on him a package wrapped in newspaper inside the fold of another newspaper. CNO Wong opened the newspaper package and found ten packets of white powdery substance inside. The appellant said in Hokkien, 'Someone asked me to deliver this.' CNO Wong then asked him in Hokkien, 'What do you have to say?' The appellant remained silent. When asked the same question again by CNO Wong, he replied in Hokkien, 'I got nothing to say.'

Meanwhile, the driver of the motor pick-up had also been detained by CNB officers. They brought the appellant and the driver back to Lengkok Bahru and later to the CNB office.

The driver, Soh Kim Leng ('Soh'), gave evidence in court for the prosecution. He narrated how, when he was watching television at home with his wife, the appellant approached him to send the appellant to Ang Mo Kio to meet a friend as the appellant had difficulty getting a taxi. The appellant also requested Soh to give the appellant's wife a lift to Macpherson Road on the way to Ang Mo Kio. Soh agreed to the requests. Soh first dropped the appellant's wife at Macpherson Road and after that he and the appellant proceeded to the canteen at Ang Mo Kio Industrial Park 1. When they got there, the appellant left the vehicle while Soh stayed in the vehicle in the driver's seat. The appellant was arrested and detained by CNB officers soon after.

The ten packets of powdery substance seized from the appellant were sent to the Department of Scientific Services for analysis. Dr Chow Shu Tze, who examined the contents of the ten packets, found them to contain not less than 33.71g of diamorphine. The appellant claimed trial. The prosecution's evidence was largely unchallenged. The appellant was convicted and sentenced to death.

At the hearing of the appeal before us, the appellant's counsel relied indirectly on a submission of 'agent provocateur'. Although he acknowledged that on the authority of *R* v *Sang*,[1] it might not be a defence, he submitted nevertheless that the role played by Goh as an agent provocateur should be relevant in convicting and sentencing the appellant. He submitted that Goh who had been arrested on 6 November 1987, the day before the appellant's arrest, had himself faced a capital charge of trafficking in 25.24g of diamorphine and another lesser charge of possession of 20.02g of diamorphine. Goh had pleaded guilty to a reduced charge of trafficking in not less than 10g and not more than 15g of diamorphine, and because of the lesser amount had been sentenced to 20 years' imprisonment and 15 strokes of the cane. As the appellant had been traced through the telephone calls made by Goh, the CNB should have raided his flat, in which case he would have been charged with only the lesser offence of possession.

As this was the only submission, and we found no merit in it, we did not require the learned deputy public prosecutor to reply. In the first place, we did not find it necessary to consider whether Goh was an 'agent provocateur' or not, as the defence of 'agent provocateur' is also not recognized in Singapore. In *R* v Sang,[1] which was cited by the appellant's counsel, two defendants were indicted on counts of conspiracy to utter forged banknotes and unlawful possession of forged banknotes. They pleaded not guilty and counsel invited the trial judge to allow a trial within a trial to determine whether the activities referred to in the indictment came about as a result of incitement by an 'agent provocateur'. The judge invited counsel to argue the point on the assumption that the necessary facts had been established. After argument, the judge ruled that he had no such discretion to exclude the evidence. Thereupon the defendants changed their pleas, and each pleaded guilty to one count and was sentenced. The Court of Appeal upheld the judge's ruling. On appeal by one defendant, the House of Lords dismissed the appeal. Lord Diplock said at p 433:

> ... The conduct of the police where it has involved the use of an agent provocateur may well be a matter to be taken into consideration in mitigation of sentence; but under the English system of criminal justice, it does not give rise to any discretion on the part of the judge himself to acquit the

accused or to direct the jury to do so, notwithstanding that he is guilty of the offence.

And again at p 437:

... for the fairness of a trial according to law is not all one-sided; it requires that those who are undoubtedly guilty should be convicted as well as that those about whose guilt there is any reasonable doubt should be acquitted. However much the judge may dislike the way in which a particular piece of evidence was obtained before proceedings were commenced, if it is admissible evidence probative of the accused's guilt it is no part of his judicial function to exclude it for this reason. If your Lordships so hold you will be reverting to the law as it was laid down by Lord Moulton in *Rex* v *Christie* [1914] AC 545, Lord du Parcq in *Noor Mohamed* v *The King* [1949] AC 182 and Viscount Simon in *Harris* v *Director of Public Prosecutions* [1952] AC 694 before the growth of what I believe to have been a misunderstanding of Lord Goddard's dictum in *Kurma* v *The Queen* [1955] AC 197.

I would accordingly answer the question certified in terms which have been suggested by my noble and learned friend, Viscount Dilhorne, in the course of our deliberations on this case. (1) A trial judge in a criminal trial has always a discretion to refuse to admit evidence if in his opinion its prejudicial effect outweighs its probative value. (2) Save with regard to admissions and confessions and generally with regard to evidence obtained from the accused after commission of the offence, he has no discretion to refuse to admit relevant admissible evidence on the ground that it was obtained by improper or unfair means. The court is not concerned with how it was obtained. It is no ground for the exercise of discretion to exclude that the evidence was obtained as the result of the activities of an agent provocateur. I would dismiss this appeal.

Lord Salmon said at p 443:

My Lords, it is now well settled that the defence called entrapment does not exist in English law: *Reg* v *McEvilly* 60 Cr App R 150; *Reg* v *Mealey* 60 Cr App R 59. A man who intends to commit a crime and actually commits it is guilty of the offence whether or not he has been persuaded or induced to commit it, no matter by whom. This being the law, it is inconceivable that, in such circumstances, the judge could have a discretion to prevent the Crown from adducing evidence of the accused's guilt — for this would amount to giving the judge the power of changing or disregarding the law. It would moreover be seriously detrimental to public safety and to law and order, if in such circumstances, the law immunized an accused from conviction. There are, however, circumstances in which an accused's punishment in such a case might be mitigated, and sometimes greatly mitigated.

The observations of the Law Lords that the defences of agent provocateur and entrapment do not exist in English law would also reflect the position in Singapore. It is not the province of the court to consider whether the CNB should have proceeded about its work in one way or the other. The court can only be concerned with the evidence before it. On the evidence before it in the present case, a conviction on any other charge would not have been appropriate; and on a conviction for the offence for which the appellant was charged, the death sentence was mandatory.

Accordingly, we dismissed the appeal.

Appeal dismissed.

Solicitors: *Edward D' Souza & Co.*

Reported by *Zarinah Marican*

Ooi Han Sun & Anor v Bee Hua Meng

HIGH COURT (SINGAPORE) — SUIT NO 6412 OF 1985
YONG PUNG HOW CJ
30 MAY 1991

Tort — Res ipsa loquitur — Burden of proof — Road accident — Defendant having control of motor vehicle — Victim a passenger — Shifting of burden

Tort — Damages — Plaintiff working illegally in Singapore — 'Ex turpi causa non oritur actio' does not apply in tort to give a good defence — Public policy will not allow plaintiff to be compensated for loss of earnings based on wages arising from working illegally in Singapore — Loss of earnings to be based on earnings in Malaysia

Tort — Damages — Loss of dependency — Possibility of widow remarrying — Rare occurrence among Asian widows

Tort — Damages — Damages in foreign currency — Discretion of court — Tort committed in Singapore — Victim a Malaysian

Evidence — Witness interested party — Witness remembering incident after a break of several years — Reliability of such evidence

The first plaintiff and the deceased were passengers in a motor pick-up driven by the defendant when the said pick-up overturned. At the time of the accident the first plaintiff and the deceased were in the employ of the owner of the motor pick-up and were being driven to work. The first plaintiff was a Malaysian and at the time of the accident had not been issued with a work permit. The deceased was a Singaporean and his claim was brought by his administratrices, the second plaintiffs.

Held, allowing both claims:

(1) Although the plaintiffs were unable to discharge the burden of proof placed on them by proving the defendant's negligence, the mere fact that the accident happened spoke for itself and, in applying the maxim res ipsa loquitur, the court could draw an inference of negligence against the defendant so as to establish a prima facie case against him.

(2) The pick-up was at all times under the control of the defendant. The accident could not have occurred without his negligence. A burden was therefore cast upon him, and he must rebut the inference of negligence raised against him.

(3) Where a witness was recalling events that took place after many years, the court must bear in mind that the memories would have blurred with the long passage of time. The unreliability of such evidence was greater when the witness was an interested party in the proceedings.